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HKEX Initiatives Present Opportunities Even in a Down Market

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Key Points

- HKEX has modified its rules to make it easier for companies to have dual primary and secondary listings.
- SPAC listings have been allowed for the first time, with rigorous requirements, and start-ups pursuing specified "specialist technologies" will be able to list even if they have little or no revenue.
- Listed companies seeking new capital can issue up to 20% new stock without offering preemptive rights, while companies are allowed to repurchase up to 10% of their outstanding stock — an option for those with solid balance sheets.
- Rules put in place after the 2008 financial crisis place limits on highly dilutive and deeply discounted capital raisings.

Like other global financial centers, Hong Kong has seen falling IPO volumes and volatile markets in 2022 in the face of challenging macroeconomic conditions and rising geopolitical tensions, including between China and the U.S. But several new initiatives by the Hong Kong stock exchange (HKEX) intend to make it more attractive and competitive for issuers. The exchange also allows capital management strategies such as secondary capital raisings and share repurchases — options companies may want to consider, depending on their financial circumstances.

More Options for Listing in Hong Kong

In the face of increasing competition from other regional exchanges, HKEX has introduced a number of measures over the past year to attract more listings.

These initiatives have included rule changes to facilitate the following:

Secondary and dual primary listings by Greater China and overseas issuers. HKEX has amended its listing rules to permit any overseas company, including a Greater China issuer, to undertake a secondary listing on HKEX, subject to meeting certain minimum market capitalization requirements. (Previously, to be accepted for listing, Greater China issuers — broadly, companies with their main business, operations, assets and/or place of central management and control in Greater China — were required to make Hong Kong their primary listing venue.) In addition, companies that are either non-Greater China companies, or Greater China companies listed on the New York or London stock exchanges prior to December 2017, may apply for a dual primary listing in Hong Kong even where their dual-class share structure or variable interest entity arrangements do not comply with HKEX requirements.

SPACs. Following similar initiatives in a number of other global markets, including HKEX's traditional regional rival Singapore, HKEX in 2022 introduced a new regime permitting SPAC listings and setting out requirements for de-SPAC transactions (mergers of SPACs with operating companies). The rules set a high bar, including a "professional investors only" requirement, rigorous eligibility criteria for SPAC promoters and a requirement to ring-fence 100% of IPO proceeds with full pro rata redemption rights offered to investors if no de-SPAC transaction is completed, or for investors wishing to redeem rather than participate in the de-SPAC transaction. HKEX treats de-SPAC transactions as new listing applications, with the same procedural and documentary requirements as a regular IPO, and it requires a substantial

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PIPE (private investment in public equity) deal to be undertaken simultaneous with the de-SPAC transaction. To date, four SPACs have successfully listed on HKEX, though none have announced a de-SPAC transaction.

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Listing of "specialist technology companies," including pre-commercial companies. In its latest initiative, HKEX proposes to permit the listing of companies engaged in certain specified "specialist technology" sectors, including next-generation information technology, advanced hardware, advanced materials, new energy and environmental protection, and new food and agriculture technologies. HKEX proposes to allow listings by both (i) companies that have already reached commercialization with recorded revenue and (ii) pre-revenue, pre-commercial companies, subject to a number of requirements, including minimum market capitalization and pre-IPO investments from sophisticated investors. This initiative is currently undergoing market consultation, with the new rules expected to be finalized in early 2023.

Capital Management

Capital raisings. Should economic pressures prompt companies to shore up their balance sheets through capital raisings by way of rights issuances to existing shareholders or through private placements to institutional investors, they will need to bear in mind HKEX rules that restrict highly dilutive and deeply discounted capital raisings. These rules were introduced recently and were not in place during the 2008 financial crisis and its aftermath, when many companies raised new capital in the secondary market.

While deeply discounted issues can be a legitimate means for companies to raise capital, HKEX had observed some companies taking advantage of this tool at the expense of excessive dilution to minority shareholders. As a result, HKEX now prohibits any capital raising — including by way of rights to existing shareholders — at a discount, on a fully diluted post-issuance basis, of 25% or more to the market price. Companies in genuine financial distress may apply for a waiver from this rule.

HKEX rules also permit companies to issue up to 20% of new stock on a non-preemptive basis at a discount of not more than 20% to the market price, provided the board has obtained a "general mandate" from shareholders at the most recent annual general meeting to make such issuances. (Meanwhile, in the U.K., updated guidelines also allow issuers listed there to raise up to 20% new capital on a non-preemptive basis. For a discussion of secondary equity offerings in the U.K., see "UK-Listed Issuers Under Financial Stress Gain Latitude in Secondary Capital Raisings.")

Share repurchases. While some companies may seek to raise new capital, with pressure on valuations, many HKEX-listed companies are seeing an opportunity to expend capital to repurchase their own shares. In addition to being a means for companies to return value to shareholders, on-market repurchases help support a share price that management believes does not reflect the true underlying value of the company.

HKEX rules permit on-market repurchases of up to 10% of existing issued share capital, provided a company has obtained a "repurchase mandate" from shareholders at its annual general meeting. Repurchases must be made at prices not more than 5% above the average closing price for the five preceding trading days. No new issues of shares are permitted within 30 days of any repurchase. By contrast, off-market purchases in Hong Kong require prior approval of shareholders.

In Sum

While the current economic climate poses challenges, Hong Kong — as the premier international financial market for the Greater China region — continues to present attractive opportunities for companies and investors. HKEX and Hong Kong's regulators have also implemented policies to ensure those opportunities continue through the market cycle.

(See also "A Playbook for Borrowers Facing Economic and Debt Market Pressures.")